182

No. 10-841

Supreme Court, U.S.
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In The

Supreme Court of the United States

VAUGHAN ROOFING & SHEET METAL, L.L.C.,

Petitioner,

v.

ANTONIO GARCIA RODRIGUEZ,

Respondent.

On Petition For A Writ Of Certiorari
To The Louisiana Court of Appeal

REPLY TO BRIEF IN OPPOSITION

KIRK L. LANDRY
Counsel of Record
KEOGH, COX AND WILSON, LTD.
701 Main Street
Baton Rouge, LA 70802
klandry@kcwlaw.com
Phone (225) 383-3796
Fax (225) 343-9612

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

ARGUMENT 1

A. RESPONDENT HAS NOT RESPONDED TO THE ISSUE PRESENTED 1

B. THERE IS NO PROCEDURAL IMPEDIMENT TO REVIEW BY THIS COURT 2

C. THE *BOLLINGER* CASE IS INAPPLICABLE 5

CONCLUSION 6

TABLE OF AUTHORITIES

Page

CASES

Bollinger Shipyards, Inc. v. Director, Office of Workers' Compensation Programs, No. 09-60095 (U.S. Ct. App., 5th Cir., 4/22/10) 604 F.3d 864 5

Chamberlain v. State, through the Department of Transportation and Development, No. 97-CA-0055 (La. 9/3/93), 624 So. 2d 874 3

FEDERAL STATUTES

28 U.S.C. § 1445 4

Rules of Decision Act, 28 U.S.C. § 1652 5

ARGUMENT

A. RESPONDENT HAS NOT RESPONDED TO THE ISSUE PRESENTED

The question presented is whether IRCA preempts state law awards of workers' compensation benefits to illegal aliens, particularly payments for replacement of wages that could not have been lawfully earned. Respondent attempts to obfuscate the issue presented to this Court. The issue is not how different states consider the eligibility of illegal aliens to receive workers' compensation benefits under their individual state laws. As is plain from the original petition, the issue is whether IRCA preempts and therefore precludes awards of state workers' compensation benefits to illegal aliens. Respondent fails to address a single one of the state cases cited in the petition that considered the issue presented.

Respondent's attempt to refocus the inquiry as one solely of state law misses the mark. The issue to be resolved by this court is the disparate application of a federal law by the various state courts to their workers' compensation systems. While the instant case solely involves a Louisiana workers' compensation claim, a ruling by this court will likely impact all states that have already addressed the issue, and any that may otherwise be called upon to address it in the future.

B. THERE IS NO PROCEDURAL IMPEDIMENT TO REVIEW BY THIS COURT

Respondent's attempts to create procedural road blocks are misguided at best. Each will be addressed.

Respondent asserts that the failure to join the State of Louisiana as a party to the underlying proceedings precludes review by this court. Incorrectly referencing both federal and state procedural statutes, Respondent asserts that the challenge to the constitutionality of a statute requires participation by the State of Louisiana, through its Attorney General. As noted in the original petition, Petitioner has never challenged the constitutionality of a particular statute. Respondent concedes that the Louisiana Workers' Compensation Act is silent as to aliens. Instead, the challenge is to the application of the Louisiana workers' compensation scheme to include illegal aliens in derogation of IRCA.

Regardless of that distinction, Respondent's assertions are both legally and factually incorrect. Fed. R. Civ. P. 5.1 is inapplicable here because the underlying case was not adjudicated in the federal system. La. C.C.P. Art. 1840 is inapplicable because there is no such article. Presumably Respondent meant article 1880, which provides, in pertinent part, "if the statute, ordinance, or franchise is alleged to be unconstitutional, the Attorney General of the state shall be served with a copy of the proceeding and be entitled to be heard." Respondent incorrectly contends that this statutory provision requires that the Attorney

General of the State of Louisiana be joined as an indispensable party. But the Louisiana Supreme Court, in an earlier case, addressed similar arguments, noting that the Article "did not contemplate that the Attorney General be required to be joined as an actual party." Instead, the court found that the article "contemplated that the Attorney General be served and be given an opportunity to be heard and to participate in the case in a representative capacity." *Chamberlain v. State, through the Department of Transportation and Development,* No. 97-CA-0055 (La. 9/3/93), 624 So. 2d 874. The court found that certified mail notice in that case was sufficient, and that the failure of the Attorney General to exercise its discretion did not preclude the constitutional issue from being addressed. In the instant case, Respondent fails to note for this court that the State of Louisiana was an actual party to the underlying proceedings as a named defendant in a consolidated case (*See* Appendix page 38, for example). While the Respondent ultimately dismissed his claim against the State, it was represented through the Attorney General's office at the time the preemption issue was presented to the trial court by way of motion for summary judgment and otherwise.

Respondent further asserts that Petitioner lacks standing to bring this action, ignoring that Respondent brought suit against Petitioner, not the other way around. Petitioner has not, as alleged by the Respondent, sought to "enjoin the payment of Workers' Compensation Replacement Benefits to illegal aliens

in all 50 states." Instead, as is plain, Petitioner urges that the Supremacy Clause requires that this state court decision be precluded by the application of the IRCA to the claim. Such application will resolve the same issue that continues to percolate in other states. Respondent's bold assertion that Petitioner has not been injured or proven a causal connexity is belied by the fact that a money judgment was cast against Petitioner in favor of Respondent. If state awards of workers' compensation benefits to illegal aliens are preempted by IRCA as asserted in the petition, the judgment against Petitioner will be reversed in whole or in part.

Respondent further claims that the matter is not ripe for consideration because there does not exist a split among the federal circuits over a federal question. The flaw of Respondent's logic is that this case was not litigated through the federal system. Indeed, the prohibition against removing state workers' compensation claims to any district court of the United States would make the litigation of such claims in a federal forum rare (28 U.S.C. § 1445). A split among multiple state courts on the proper application of federal law is appropriate for review by this court.

Respondent falsely asserts that the court of appeal did not address the issues presented in this petition. The court of appeal explicitly considered them (*See* Appendix pages 20-23). Respondent relies solely on the court of appeal commentary that "it would not consider those claims on review as the claim has not been presented in proper form in proceedings

below." It is unclear what the court of appeal actually meant by that verbiage because it did, in fact, consider the issues. As noted in the application, they were properly raised at all trial and appellate levels.

Finally, respondent advocates application of the Rules of Decision Act, 28 U.S.C. § 1652, to require that Louisiana state law apply. As noted above, this case was not adjudicated in a United States District Court, thus the Rules of Decision Act is inapplicable to this case.

C. THE *BOLLINGER* CASE IS INAPPLICABLE

Respondent correctly notes that Petitioner does not rely on the *Bollinger* case in support of its petition. *Bollinger Shipyards, Inc. v. Director, Office of Workers' Compensation Programs*, No. 09-60095 (U.S. Ct. App., 5th Cir., 4/22/10) 604 F.3d 864. Bollinger filed a claim for benefits under the Longshore and Harbor Workers' Compensation Act (LHWCA), which provides protection to workers who are injured or contract occupational diseases on the navigable waters of the United States, or in adjoining areas, and for certain other classes of workers covered by extensions of the act. The LHWCA was originally enacted by Congress in 1927, with subsequent revisions. Accordingly, and most simply, both IRCA and the LHWCA are Congressionally enacted statutory schemes, thus no Supremacy Clause issues were addressed by *Bollinger*. Further, that case did not address whether

IRCA preempts state workers' compensation awards, and did not even cite a single state court decision.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

KIRK L. LANDRY
Counsel of Record
KEOGH, COX AND WILSON, LTD.
701 Main Street
Baton Rouge, LA 70802
klandry@kcwlaw.com
Phone (225) 383-3796
Fax (225) 343-9612